DOCKET NO. WWM-CV15-6009136 S

MELANIE PEREZ *Plaintiff*	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF WINDHAM AT PUTNAM
STATE OF CONNECTICUT JUDICIAL DEPARTMENT *Defendant*	:	March 4, 2016

DEFENDANT'S RESPONSE TO EMERGENCY MOTION TO SEAL AND CASEFLOW REQUEST

The defendant, State of Connecticut Judicial Branch, hereby submits this Response to the plaintiff's Emergency Motion to Seal, dated March 2, 2016. On March 1, 2016, the plaintiff filed two (2) expert disclosures on March 1, 2016, both of which the plaintiff claims contain medical information. On March 2, 2106, the plaintiff filed an Emergency Motion to Seal and Caseflow Request, requesting that the court make an "emergency ruling" on the Motion to Seal. On March 3, 2016, the court, *Riley, J.*, granted the plaintiff's Caseflow Request and scheduled the Motion to Seal for short calendar on March 14, 2016. The defendant does not object to the sealing of the disclosures of medical experts. The defendant, however, merely wants to ensure that the plaintiff follows the rules regarding sealing documents.

Practice Book § 11-20A governs the process for sealing documents. Practice Book § 11-20A (a) provides: "Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public." Practice Book § 11-20A (a). "[T]he Superior Court has opined that, in order to overcome the [Practice Book] § 11–20A presumption in favor of public access to judicial documents, a specific injury which would unfairly harm the parties must be shown and the sealing must be narrowly tailored to it." (Internal quotation marks omitted.) Cavalry SPV I, LLC v. Underkofler, Superior Court, judicial

district of New Haven, Docket No. NNHCV136037939, 2014 WL 683873, at *3 (*Nazzaro, J.* Jan. 24, 2014).

Judge Cole-Chu's decision in Clapper v. Gallup, Superior Court, judicial district of New London, Docket No. KNLCV136015755S, 2015 WL 5133754, at *1-2 (*Cole-Chu, J.* July 14, 2015) (see attached), provides a guideline for how the court should proceed when ruling on a motion to seal. "The rules of practice which apply to motions to seal files or documents within files are detailed, and punctilious compliance with them is required, to preserve the presumption that, '[e]xcept as otherwise provided by law . . . documents filed with the court shall be available to the public.' . . . In ruling on a motion to seal any part of a court file after commencement of an action, subsections (c) through (f) of Practice Book § 11–20A require **the applicant** to prove, and the court to consider, and to make findings on, the following factors, even if the parties agree to the requested order." (Citations omitted; internal quotation marks omitted). Id. at *1-2.

> Unless the court has ordered otherwise, has the motion been calendared at least fifteen days after its filing so that the public has had notice of it, and of the time and place of the hearing on the motion (and thereby an opportunity to be heard on the motion)? § 11–20A(e) and (f)(1).
>
> What is the interest sought to be protected—and claimed to override the public's interest in viewing the material sought to be sealed? § 11–20A(c) and (d).
>
> What, if any, reasonable alternatives to the requested order exist? § 11–20A(c). Is the requested order necessary to preserve an interest which the court finds to override the public's interest in viewing such materials?
>
> If the court decides to grant the motion, is the order only as broad as necessary to protect the overriding interest? What more narrow remedies did the court consider and why is each of those unavailable or inadequate? § 11–20A(f)(2) (alternatives to sealing entire file include redaction, partial sealing and use of pseudonyms instead of sealing). Upon what specific facts does the court base its order? § 11–20A(d). (It being the movant's burden of proof, and it being generally inappropriate to find facts—in the absence of a party stipulation—from unsworn witness or counsel statements, the movant must submit admissible evidence such as testimony at the hearing or if, as here, the court so allows, affidavit(s).)

What is the duration of the order?

If any of the court's findings would reveal information which the court finds entitled to remain confidential, should those findings be sealed?

The time, date, scope and duration of the order of sealing must be in writing, signed by the issuing judge, and immediately entered in the court file and, subject to sealing of findings under § 11–20A(d), posted on the Judicial Branch website and on a bulletin board accessible to the public and adjacent to the clerk's office.

The court shall either prepare a memorandum of decision on the motion or order that a transcript of its decision be included in the file. § 11–20A(d). See, generally, *Doe v. Doe,* Superior Court, judicial district of New London, Docket No. KNL CV–14–6022176–S (November 6, 2014).

(Citations omitted). Clapper, 2015 WL 5133754 at *2.

As stated in Clapper, it is the applicant's burden to prove that all the elements of Practice Book § 11-20A have been met. In this instance, the plaintiff applicant has not properly followed the Practice Book in seeking to have the disclosures of medical experts sealed. At the outset, plaintiff did not file a memorandum of law in support of its Motion to Seal, as is required by Practice Book § 7-4B. Practice Book § 7-4B (b) provides that a motion to seal "**must be accompanied** by an appropriate memorandum of law to justify the sealing or limited disclosure." (Emphasis added). Practice Book § 7-4B (b). Moreover, the plaintiff has failed to address any of the elements in Practice Book 11-20A and as outlined in the Clapper decision. Specifically, by asking for an "emergency ruling" on the Motion to Seal, the plaintiff is not following Practice Book §§ 11-20A (e) and (f)(1) that require that the Motion to Seal be on the short calendar for at least fifteen (15) days. The plaintiff has not shown that alternatives to sealing the documents such as redacting the documents would not suffice. The plaintiff has not provided any details about the duration of the proposed order. Therefore, before the court proceeds with ruling on the Motion to Seal, the plaintiff should follow the appropriate Practice Book sections to ensure that the sealing of the documents is done in the proper manner.

DEFENDANT,

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CERTIFICATION

I hereby certify that on March 4, 2016 a copy of the foregoing Response was mailed, first class postage prepaid, to all parties of record as follows:

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Josephine S. Graff
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Commissioner of the Superior Court

2014 WL 683873

Superior Court of Connecticut,
Judicial District of New Haven.

CAVALRY SPV I, LLC
v.
Sean UNDERKOFLER.

No. NNHCV136037939.
|
Jan. 24, 2014.

Attorneys and Law Firms

Shechtman Halperin Savage LLP, Pawtucket, RI, for Cavalry SPV I, LLC.

Opinion

NAZZARO, J.

*1 At issue is the defendant's motion to seal. For the reasons set forth below, the court finds the privacy interest sought to be protected outweighs the public's interest in obtaining essentially private **medical** information. The court further finds that a reasonable alternative to sealing exists in the form of redaction. The motion is granted in part.

FACTS AND PROCEDURAL HISTORY

On April 9, 2013, the plaintiff, Cavalry SPV I, LLC, commenced this action by service of a summons and two-count complaint on the defendant, Sean Underkofler. The defendant, who is self-represented, filed a motion to dismiss the complaint on May 21, 2013, and a motion to quash the plaintiff's discovery requests on July 17, 2013.[1] On September 24, 2013, the defendant filed the present "Motion to Seal Personal Identifying Information (PB 11–20B or PB 25–59B)" (motion to seal) and an "Addendum to his Response to Plaintiff's Objection to Defendant's Motion to Dismiss" (addendum). The defendant moves to seal Exhibit B to the addendum, which consists of two letters written by his treating physicians, dated July 18, 2006, and January 19, 2007. When the matter was heard at short calendar on October 28, 2013, the plaintiff represented to the court that it does not oppose the motion to seal.

DISCUSSION

Practice Book § **11–20A** governs the sealing of files in civil cases.[2] This section provides that an agreement between the parties is not a sufficient basis for granting a motion to seal. Practice Book § **11–20A**(c); see also *Bank of New York v. Bell*, 120 Conn.App. 837, 846, 993 A.2d 1022, cert. denied, 298 Conn. 917, 4 A.3d 1225 (2010) ("The right to have documents sealed is not a right the parties have as against each other; the court must determine the question as against the demands of the public interest" [internal quotation marks omitted]). Accordingly, the following subsections of Practice Book § **11–20A** are relevant to the court's consideration of the present motion to seal:

"(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

"(b) Except as provided in this section and except as otherwise provided by law, including Section 13–5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

"(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

*2 "(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of

such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

"(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7–4B and 7–4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

"(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order ...

"(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the Judicial Branch website. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public." Practice Book § **11–20A**.

"[Practice Book] § **11–20A** codifies the common-law presumption of public access to judicial documents ..." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 30, 970 A.2d 656, cert. denied sub. nom. *Bridgeport Roman Catholic Diocesan Corp. v. New York Times Co.*, 558 U.S. 991, 130 S.Ct. 500, 175 L.Ed.2d 348 (2009). "The presumption of openness of court proceedings ... is a fundamental principle of our judicial system ... This policy of openness is not to be abridged lightly. In fact, the legislature has provided for very few instances in which it has determined that, as a matter of course, certain privacy concerns outweigh the public's interest in open judicial proceedings." (Internal quotation marks omitted.) *Bank of New York v. Bell, supra,* 120 Conn.App. at 846.

***3** "[T]he Superior Court has opined that, in order to overcome the [Practice Book] § **11–20A** presumption in favor of public access to judicial documents, a specific injury which would unfairly harm the parties must be shown and the sealing must be narrowly tailored to it." (Internal quotation marks omitted.) *Redmond v. Promotico,* Superior Court, judicial district of New Haven, Docket No. CV–12–6029399–S (October 16, 2012, Wilson, J.) (54 Conn. L. Rptr. 828, 829). Thus, the threshold inquiry in the present case is whether the defendant's privacy interest in the **medical** information contained in Exhibit B justifies a sealing order.[3]

Judges of the Superior Court have found that an individual's privacy interest in his **medical** records may override the public's interest in open judicial proceedings. See *Noll v. Hartford Roman Catholic Diocesan Corp.,* Superior Court, judicial district of Hartford, Docket No. CV–02–4034702–S (September 16, 2008, Shapiro, J .) (citing Health Insurance Portability and Accountability Act of 1996 [HIPAA] and concluding that public had only limited interest in deponent's personal **medical** information but deponent had substantial privacy interest in keeping such information confidential); accord *Tauck v. Tauck,* Superior Court, judicial district of Middlesex, Docket No. FA–05–4004889–S (September 21, 2007, Abery–Wetstone, J.) (emphasizing private nature of family matters and granting motion to seal where disclosure of parties' **medical** records might discourage them from seeking treatment). In the present motion to seal, the defendant relies on HIPAA as support for his asserted interest in maintaining the privacy of his **medical** information.[4] Here, the court finds that the defendant's privacy interest overrides the public's interest in viewing the personal **medical** information. Nondisclosure in the public domain protects and advances a party's privacy concerns. Notably, the plaintiff poses no objection to sealing such documents.

It is incumbent on this court to consider reasonable alternatives to a sealing order, such as redaction. See Practice

Book § 11–20A(c). In undertaking this consideration, it is noted that where information is already in the public domain, no useful purpose would be served by limiting the public's access through a motion to seal. See *Sienkiewicz v. Ragaglia,* Superior Court, judicial district of Fairfield, Docket No. CV–10–6008363 (March 2, 2011, Arnold, J.) (denying motion to seal where parties' filings and court's decisions in prior action contained materially all information sought to be sealed in current action). Moreover, the privacy interest that justifies sealing personal **medical** information does not obtain with respect to information a party has voluntarily placed in issue in the litigation. *O'Dell v. Greenwich Healthcare Services, Inc.,* Superior Court, judicial district of Stamford–Norwalk, Docket No. CV–11–6008364–S (April 25, 2013, Adams, J.) (denying motion to seal exhibits whose "contents ... are quite thoroughly and openly discussed in memoranda and affidavits submitted in connection with [the motion for] summary judgment").

*4 In the present case, the defendant discusses much of the **medical** information contained in Exhibit B in his reply to the plaintiff's objection to the motion to dismiss. See Docket Entry # 111. Notwithstanding this partial disclosure, the defendant maintains a privacy interest in the undisclosed information sufficient to override the presumption of public access. The court finds that redacting the undisclosed information, which is contained in the letter dated July 18, 2006, is a reasonable alternative to sealing that will effectively advance the defendant's privacy interest in this information.

CONCLUSION

On the basis of the foregoing findings, the court issues the following order. There exists a reasonable alternative to sealing in the form of redacting that information which the defendant has not previously disclosed in public filings with the court. Accordingly, the defendant shall e-file a copy of Exhibit B from which he has redacted the fourth, fifth, and sixth sentences of the letter dated July 18, 2006. Pursuant to Practice Book § **11–20A**(d), the unredacted copy of Exhibit B lodged with the court will remain sealed for the duration of this litigation and any appeal period thereafter. The contents may be disclosed upon further leave of the court. Furthermore, pursuant to Practice Book § **11–20A**(g), "any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order."

It is so ordered.

All Citations

Not Reported in A.3d, 2014 WL 683873, 57 Conn. L. Rptr. 535

Footnotes

1 On November 4, 2013, the court denied both motions.

2 Preliminarily, it is noted that although the defendant titled the present motion "Motion to Seal Personal Identifying Information (PB 11–20B or PB 25–59B)," both of these Practice Book sections are irrelevant. Practice Book § 11–20B provides in relevant part: "If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may request that the document containing the personal identifying information be sealed." Exhibit B does not contain any "personal identifying information" as that term is defined. See Practice Book § 4–7(a). Practice Book § 25–59B is also irrelevant as it pertains to the sealing of personal identifying information in family matters.

3 This inquiry is hampered by the defendant's failure to comply with Practice Book § 7–4B, which provides in relevant part: "The motion [to seal] must be accompanied by an appropriate memorandum of law to justify the sealing or limited disclosure." Nevertheless, the Supreme Court has recognized "the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party." (Internal quotation marks omitted.) *Equity One, Inc. v. Shivers,* 310 Conn. 119, 136 n. 13, 74 A.3d 1225 (2013).

4 Specifically, the defendant states that he "does not waive his right to confidentiality of his privileged **medical** information under HIPAA federal law protection, and has redacted some identifying confidential and irrelevant information." It is unclear whether the defendant relies on HIPAA as a basis for asserting a privacy interest that warrants sealing or merely

as a justification for having redacted the letters. An examination of the letters indicates that the defendant has redacted the names of the physicians who wrote them.

End of Document

2015 WL 5133754
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New London.

John C. CLAPPER, Jr., Administrator et al.
v.
Joel GALLUP et al.

No. KNLCV136015755S.
|
July 14, 2015.

Attorneys and Law Firms

Adler Law Group, L.L.C., East Hartford, for John C. Clapper, Jr.

Donahue Durham & Noonan, P.C., Guilford, for Joel Gallup.

Opinion

COLE–CHU, J.

*1 Before the court is the defendant Joel Gallup's motion pursuant to Practice Book §§ 7–4B, 7–4C and 11–20A to seal two exhibits ("the exhibits") to his opposition to the plaintiffs' motion # 120 to compel production by Gallup of a DNA sample. [1] The motion to seal was calendared for hearing on June 29, 2015. See Practice Book § 11–20A(f)(1), *infra*. The motion was called on that day, with no response, and submitted on the papers.

FACTS

On December 7, 2010, there occurred a catastrophic, single-vehicle accident on Rt. 201 in Griswold. Four of five high school students in the car, including the plaintiffs' son, died that day. Only the defendant survived. The accident and its aftermath received citizen interest and concern and extraordinary press coverage.

Omitting legal conclusions and opinions, [2] the plaintiffs allege the following key facts.

The plaintiffs' son and decedent, John Clapper, was a passenger in the automobile that crashed on that day. The plaintiffs are informed and believe that the defendant Joel Gallup was operating that automobile at that time and place, with the permission and/or authority of its owner, defendant Gina Pelletier. At that time and place, the defendant Gallup so negligently operated the automobile, in multiple particulars including unreasonable speed, that he caused the vehicle to leave the road and collide with a tree. The collision caused fatal injuries to the plaintiffs' son and decedent.

In the motion being opposed, in substantial part, by the exhibits sought to be sealed, the plaintiffs state that the Connecticut State Police have determined that their son John was the driver of the automobile and that "obtaining the DNA of the defendant, Joel Gallup, is the only remedy available for the plaintiffs to conclusively determine the driver of the vehicle at the time it crashed into the tree ... It can also exclude him from being the driver." The exhibits sought, without opposition from the plaintiffs/movants, are State Police investigation records, including photographs.

The court finds based on advice from the court clerk's staff that notice of the present motion to seal's nature and hearing date, time and place was automatically posted on the Judicial Branch's website (http:// civilinquiry.jud.ct.gov/SealedShortCalendar.aspx) and was posted in the New London Judicial District courthouse in accordance with Practice Book § 11–20A(f)(1). The motion to seal was filed more than fifteen days before the hearing date. Other facts will be found in the court's analysis.

DISCUSSION

The rules of practice which apply to motions to seal files or documents within files are detailed, and punctilious compliance with them is required, to preserve the presumption that, "[e]xcept as otherwise provided by law ... documents filed with the court shall be available to the public." Practice Book § 11–20A(a); see Practice Book § 11–20A(b); [3] see *Vargas v. Doe*, 96 Conn.App. 399, 413, 900 A.2d 525 (2006), cert. denied, *Vargas v. Doe*, 280 Conn. 923, 908 A.2d 546 (2006) (rules provide "an intricate procedure that the court must follow"); see also *Doe v. Connecticut Bar Examining Committee*, 263 Conn. 39, 69, 818 A.2d 14 (2003) (threshold for granting motions to proceed anonymously is high).

*2 In ruling on a motion to seal any part of a court file after commencement of an action, subsections (c) through (f) of Practice Book § 11–20A require the applicant to prove, and the court to consider, and to make findings on, the following factors, even if the parties agree to the requested order. See § 11–20A(c) (agreement is not valid grounds for order); *Vargas v. Doe, supra,* 96 Conn.App. 410 (burden of proof is on applicant).

Unless the court has ordered otherwise, has the motion been calendared at least fifteen days after its filing so that the public has had notice of it, and of the time and place of the hearing on the motion (and thereby an opportunity to be heard on the motion)? § 11–20A(c) and (f)(1).

What is the interest sought to be protected—and claimed to override the public's interest in viewing the material sought to be sealed? § 11–20A(c) and (d).

What, if any, reasonable alternatives to the requested order exist? § 11–20A(c). Is the requested order necessary to preserve an interest which the court finds to override the public's interest in viewing such materials? *Id.*

If the court decides to grant the motion, is the order only as broad as necessary to protect the overriding interest? *Id.* What more narrow remedies did the court consider and why is each of those unavailable or inadequate? § 11–20A(f)(2) (alternatives to sealing entire file include redaction, partial sealing and use of pseudonyms instead of sealing). Upon what specific facts does the court base its order? § 11–20A(d). (It being the movant's burden of proof, and it being generally inappropriate to find facts—in the absence of a party stipulation—from unsworn witness or counsel statements, the movant must submit admissible evidence such as testimony at the hearing or if, as here, the court so allows, affidavit(s).)

What is the duration of the order? *Id.*

If any of the court's findings would reveal information which the court finds entitled to remain confidential, should those findings be sealed? *Id.*

The time, date, scope and duration of the order of sealing must be in writing, signed by the issuing judge, and immediately entered in the court file and, subject to sealing of findings under § 11–20A(d), posted on the Judicial Branch website and on a bulletin board accessible to the public and adjacent to the clerk's office. *Id.*

The court shall either prepare a memorandum of decision on the motion or order that a transcript of its decision be included in the file. § 11–20A(d). See, generally, *Doe v. Doe,* Superior Court, judicial district of New London, Docket No. KNL CV–14–6022176–S (November 6, 2014).

"Inherent in the concept of judicial discretion is the idea of choice and a determination between competing considerations ... A court's discretion must be informed by the policies that the relevant statute is intended to advance." (Citation omitted.) *State v. Robinson,* 32 Conn.App. 448, 460, 630 A.2d 87 (1993), aff'd, 230 Conn. 591, 646 A.2d 118 (1994). In the exercise of this discretion, there can be no requirement that the court so the limit relief granted that it is ineffective, including that, by diligent or creative search, or by accident, documents intended to be sealed could be viewed by non-parties, let alone by the general public.

*3 In this light, the court makes the following findings on the present motion to seal the file.

The motion has been lodged, calendared, posted and heard in the manner required by § 11–20A(e) and (f)(1).

The interests which the defendant seeks to protect by a court order sealing the subject exhibits and which he claims override the public interest in access to those exhibits are the following. First is the parties' interest in confidentiality of the privileged and/or highly sensitive medical and other accident investigation information in the exhibits.[4] Second is the interest of the families of the other students killed in the accident in the confidentiality of those students' medical records. Third is the interest of the defendant and of the families of all the accident victims—including the plaintiffs—in keeping graphic details of the horrific, sensational accident as private as is consistent with the law and public policy, particularly in avoiding another round of sensational press coverage now, four and one-half years after the accident. Fourth, the movant has, and clearly if implicitly claims, an interest in not having to choose between, on the one hand, self-censoring and submitting a weak opposition to the motion to provide a DNA sample and, on the other hand, a substantial risk of condemnation, or even legal actions, for revealing graphic details in defending the DNA motion.

The court finds all of the four interests of the defendant listed above override—they outweigh—the public's interest in viewing the exhibits.

Just as an agreement of the parties to sealing is insufficient to justify such an order, the issues raised by the movant are not the only ones the court may consider. To the movant's interests, the court adds two other public policy interests. The first is the court's, the state's and, indeed, the public's interest in maintaining the dignity of the courts and court proceedings. The court finds that that interest would be harmed if, in the name of the public's right to know, the court did not realistically weigh both the separate and the cumulative effects of allowing so-far confidential police records, including dramatic details and confidential medical and other personal information, to be filed and maintained in the court's public records. Subject to proceedings under the Freedom of Information Act, the public's right to know the details of the accident, the investigation and the victims' medical conditions can, in certain cases, at least wait until the facts and claims have been adjudicated and it is the court's responsibility to determine which those cases are.

The second public policy interest is in both the fairness and the perception of fairness of our court system. In a lawsuit, even between impeccably courteous and reasonable litigants, there is always at least the inherent stress of a dispute which the parties have been unable to resolve outside of the court system. Courts have the inherent duty and power to determine whether judicial restraint would mean unfair oppression of one party by another (let alone intentional use of the court as an instrument of such oppression); that is, to determine whether and when protection of the actual and perceived fairness of court records and proceedings requires an exception to the public's general right to know what goes on in the court system. This court finds these two public policy interests add weight to the movant's § 11–20A motion because, in fairness, the movant should be able to litigate this case without having to make the choice described above between self-censoring at the price of a weak opposition to a motion and a substantial risk of public condemnation, or even legal actions, for revealing graphic details in these days of the internet, social media websites and other communications technologies, the existence and common, pervasive, fast, far-reaching and often anonymous use of which the court can and does take judicial notice. [5]

*4 The court has reviewed the exhibits and finds their pertinent content generally so sensitive, confidential and conducive to sensationalism and distress if made public at this time that it is appropriate to grant the present motion.

Other than wishing the movant had been more selective in preparing the exhibits, the court finds no reasonable alternative to sealing them. The court has considered redaction of the exhibits. Apart from the fact that the general confidentiality of the police records applies to every part of those records, the court finds redaction would be impractical: eliding graphic or medical details and ordering the release of redacted versions of the exhibits is not reasonably likely to constitute a reasonable compromise in the eyes of the defendant, of the families of the accident victims, or of the public. Elision from the scope of this order of pages within the exhibits which seem to the court impertinent to the defense of the DNA motion would have no social or public policy point, since by definition they do not illuminate the horrors and losses flowing from the accident. Therefore, viewing the present situation practically, the court finds that sealing the exhibits is relief which is no broader than necessary.

The court finds that an order sealing the exhibits—this order—is fitting under Practice Book § 11–20A, necessary to preserve the foregoing interests and no broader than necessary. The best the court can see to do in the interest of disclosure is not to seal this decision or the decision on the motion that the defendant provide a DNA sample for testing. For these reasons, the motion to seal is granted.

Because the exhibits are only submitted on one motion, they shall remain lodged with the clerk for a period of thirty days from the date of filing of this order, the court finding that ample time for any interested person to appeal this ruling-only seventy-two hours being allowed by Practice Book § 11–20A(g)—and for the court to rule on the motion for a DNA sample. Thereafter, unless there is an appeal, the exhibits shall be returned to the movant upon the movant's written request to the clerk.

Cole–Chu, J.

All Citations

Not Reported in A.3d, 2015 WL 5133754

Footnotes

1 This judge will rule on motion # 120, submitted on the papers on June 16, 2015.

2 The interpretation of pleadings is always a question of law for the court. *Boone v. William W. Backus Hospital*, 272 Conn. 551, 559, 864 A.2d 1 (2005).

3 Section **11–20A**(b) provides "Except as provided in this section and except as otherwise provided by law, including Section 13–5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited."

4 The exhibits are almost a one-inch stack. The court is skeptical that all that information was appropriate, let alone necessary, to defend the plaintiffs' motion to compel a DNA sample, particularly since the movant cited few particulars in the exhibits. However, the court of course allows for reasonable professional judgments of counsel and self-represented parties and, even if the defendant was overly aggressive—or sloppy—in submitting so many pages, the proper judicial response is not to deny the motion. Superfluity has no material affect on this ruling because the documents within the exhibits which clearly would be pertinent to the defendant's opposition to the plaintiffs' motion are basically the ones most appropriate for sealing.

5 Although preserving the confidentiality of medical records is a well-known and important aspect of HIPAA, the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, et seq., the movant does not claim, and this court does find, HIPAA to apply to police records. The movant cites a nonexistent statute, § 56–140*o*, as also regulating disclosure of medical information. That error, while puzzling, is not a ground for denying the present motion.

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